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REPORT BY THE

Comptroller General

OF THE UNITED STATES

COMPLETED

ORIGINAL

Congress Should Clarify The Speedy Trial Act To Resolve Differing Interpretations

Compliance with the Speedy Trial Act has increased steadily over the past 4 years. Ninety-six percent of the criminal cases handled by all Federal district courts during the last 6 months of 1979 were processed within the act's 100-day time limit.

Problems still exist, however, in interpreting and applying some sections of the act. As a result of some of these differing interpretations, future criminal cases might be inappropriately dismissed.

GAO recommends that the Congress amend the Speedy Trial Act to clarify those sections at issue.

SUMMARY

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REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES

CONGRESS SHOULD CLARIFY THE SPEEDY TRIAL ACT TO RESOLVE DIFFERING INTERPRETATIONS

D I G E S T

The intent of the Speedy Trial Act of 1974 is to speed the prosecution of accused persons in order to isolate those found guilty and prevent additional crimes by setting uniform time limits within which U.S. district courts have to process criminal cases.

Following a gradual 4-year phase-in period, the act established a permanent 100-day time limit during which criminal cases must be processed. GAO's review found that compliance with the act's requirements has increased steadily over the past 4 years. However, because the executive and judicial branches interpret some provisions of the act differently, future criminal cases might be inappropriately dismissed. Congress should act to clarify those issues in question.

HOW THE ACT WORKS

As of July 1, 1980, the Speedy Trial Act provides for the dismissal of Federal criminal cases not proc sed within established time limits. The first time limit, 30-days (Interval I), includes the period from arrest to indictment. The second time limit, 70 days (Interval II), includes the period from either indictment or the defendant's first appearance before the court to the start of trial, plea of guilty, or dismissal.

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While the time frames are fixed, the running of time can be stopped on an interim basis by events specified in the law. The events and consumed days are referred to as excludables and excludable periods of delay, respectively. (See pp. 1 and 2.)

THE ACT HAS BEEN EFFECTIVE

The act's objective of speedily prosecuting accused persons within the established time limits was accomplished in 96 percent of the criminal cases processed during the period July 1, 1979, to December 31, 1979. During Interval I, 2,615 defendants were arrested and all but 108 were processed within the time limit. Out of 7,753 cases processed during Interval II, 316 cases exceeded the time limit. (See p. 4.)

In the District of Columbia District Court, compliance with the act's time limits for the 6-month period was 95 percent for Interval I and 92 percent for Interval II. However, the incidence of recording errors was high, averaging one error per criminal case. Correcting the errors would raise the district's compliance rates above the national average. (See pp. 16 to 21.)

PROBLEMS IN INTERPRETING THE ACT EXIST

Several studies, including GAO's, have identified problems in interpreting and applying sections of the act. GAO believes that the varying interpretations and applications need to be corrected to insure that criminal cases are not dismissed inappropriately. (See pp. 4 to 15.)

Some prosecutable cases are dismissed before indictment

After the start of Interval I, cases are sometimes dismissed because U.S. attorneys are unable or choose not to move the cases within the 30-day limit. With the case dismissed and the time limit removed, prosecutors gain more time to prepare their case and then indict at a later date. This practice, however, has the effect of slowing down the processing of criminal cases.

The Judicial Conference and the Executive Office for U.S. Attorneys believe that the act does not prohibit this practice, and that it is often necessary to enable further investigation of criminal activities. However, the Justice Department has told United States attorneys to keep such dismissals to a minimum.

The frequency of this practice is not known because the Administrative Office of the U.S. Courts does not collect data on all Interval I cases as required. Lacking such information, no one is able to determine whether dismissals prompted by the act's time limits are a significant problem that may be undermining the act's objective. (See pp. 4 to 8.)

Starting date for Interval II not clear

The Executive Office of U.S. Attorneys believes that the act is not clear as to the starting date of Interval II. The Judicial Conference, however, maintains the act is clear. Courtroom deputy clerks in the D.C. District Court used different dates to start the interval. Using the wrong starting date could inadvertently cause the time limits to be exceeded. This could

lead to the possible dismissal of criminal cases.

Interval II starts on the date of indictment or date of a defendant's first appearance on the criminal charge, whichever event occurs later. The clarification needed is whether the act, in referring to the defendant's first appearance on the criminal charge, means (1) the defendant's pre-indictment appearance or (2) the defendant's post-indictment appearance. (See pp. 8 and 9.)

Problems in applying the minimum 30-day period provisions

To insure adequate time to prepare a defense, the Speedy Trial Act provides a minimum period of 30 days after the defendant's first appearance. Three issues have arisen in implementing this provision--whether excludable periods of delay apply, what constitutes a defendant's first appearance, and whether the minimum period is applicable to superseding charges.

With regard to these three issues, the Judicial Conference (1) holds that excludable periods of delay do not apply to the minimum period, contrary to the intent as expressed in the Senate report on the 1979 amendments, (2) has stated in its guidelines that the 30-day period starts on the indictment date rather than the defendant's first appearance date as specified by the act, and (3) has interpreted in its guidelines that the minimum period does not start over when prosecution resumes. (See pp. 9 to 12.)

Can the act's time limits be waived?

Studies by GAO and others have found that defendants were waiving their rights to dismissal before the case was subject to dismissal for exceeding the act's time

limits. Such waivers had the effect of delaying the start of trials, which the Senate clearly did not intend.

The United States Attorneys' Manual strongly recommends that Government attorneys attempt to discourage district courts from allowing waivers. The Judicial Conference has not provided guidance to district courts and because the act is silent, the judiciary continues to debate whether such waivers should be allowed. (See pp. 12 and 13.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress amend the Speedy Trial Act to clarify

--how and under what circumstances pre-indictment dismissals followed by an indictment affect the Interval I time limit,

--the starting date for Interval II,

--the 30-day minimum period before trial, and

--whether dismissal waivers in advance of the expiration of the time limits are allowable and, if not, their effect on other provisions of the act. (See pp. 13 and 14.)

AGENCY COMMENTS

GAO obtained oral comments from officials of the Executive Office for U.S. Attorneys, and the Administrative Office of the U.S. Courts. They expressed the view that their positions on the issues discussed in this report were accurately presented. On two issues--the minimum period before trial can begin and defendants' rights to waive the act's time limits--Executive Office and/or Administrative Office officials

expressed the view that the issues would be resolved through the courts' appellate processes. (See p. 14.)

While GAO does not disagree, this approach will be lengthy and does not guarantee that the issues will be addressed. Thus, GAO's recommendation that the Congress act to resolve the differing interpretations discussed in this report remains the quickest and most certain resolution.

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ABBREVIATIONS

D.C.	District of Columbia
GAO	General Accounting Office